

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

)	
Complaints of Christian Faith Broadcast, Inc. v.)	
Cox Communications)	
Time Warner Cable)	
Orwell Cable Television)	
Rapid Cable)	CSR-7207-M
GLW Broadband)	CSR-7208-M
)	CSR-7209-M
for Carriage of WGGN-TV, Sandusky, Ohio)	CSR-7210-M
)	CSR-7230-A
Time Warner Cable)	CSR-7211-M
)	CSR-7350-A
and)	
)	
CoxCom LLC d/b/a/ Cox Cable Cleveland Area)	
)	
Petitions for Modification of the Designated)	
Market Area of Television Broadcast Station)	
WGGN-TV, Sandusky, Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 2007

Released: September 17, 2007

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Christian Faith Broadcast, Inc. (CFB), licensee of WGGN-TV, Channel 52, Sandusky, Ohio, filed the captioned complaints pursuant to Sections 76.7 and 76.61 of the Commission's rules requesting an order requiring carriage of the signal of WGGN-TV in the communities served by five Ohio cable systems in the Cleveland-Akron (Canton) Ohio Designated Market Area.¹ No opposition was received regarding the complaints concerning Orwell Cable Television (Orwell),² Rapid Cable (Rapid),³

¹ 47 C.F.R. §§ 76.7 and 76.61.

² Serving the communities of Orwell, Colebrook Twp., North Bloomfield Twp., Rome Twp., and Windsor Twp.

³ Serving the communities of Denmark Twp., Ashtabula, Dorset Twp., Jefferson Twp., Monroe Twp., Pierpont Twp., Plymouth Twp., Sheffield Twp., Rock Creek, Roaming Shores, Thompson Twp., Claridon, Hambden Twp., Hartsgrove, Huntsburg Twp., LeRoy Twp., Montville, Trumbull Twp., and Windsor.

and GLW Broadband (GLW).⁴ Cox Communications Cleveland Area (Cox) filed an opposition to the complaint, a motion to dismiss the complaint, and a petition to modify the market area of WGGN. Time Warner Cable (Time Warner) filed an opposition to the complaint and a petition to modify the market area of WGGN. As set forth below, CFB's carriage complaints are granted as to Orwell, Rapid, and GLW, and granted in part as to Cox and Time Warner. Cox's market modification petition is denied. Time Warner's market modification petition is granted in part and denied in part.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.⁵ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.⁶ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁷

3. The Commission's must carry rules provide that cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁸ One method of doing so is for a cable operator to establish that a subject station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁹ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a station may provide a cable operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend.¹⁰

⁴ Serving the communities of Wellington Village, Wellington Twp., Brighton Twp., Brownhelm Twp., Camden Twp., Eaton Twp., Grafton, Grafton Twp., Henrietta Twp., Kipton, Lagrange, Lagrange Twp., Penfield Twp., Pittsfield Twp., Rochester, and Rochester Twp..

⁵ 8 FCC Rcd 2965, 2976-2977 (1993).

⁶ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

⁷ For a more complete description of how counties are allocated, see Nielsen Media Research, *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁸ *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Report and Order, 8 FCC Rcd 2965 ("Must Carry Order").

⁹ 47 C.F.R. § 76.55(c)(3).

¹⁰ *Must Carry Order*, 8 FCC Rcd at 2991.

4. The Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.¹¹

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.¹²

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.... [This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.¹³

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in

¹¹ 47 U.S.C. §534(h)(1)(C).

¹² *Id.*

¹³ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

the market.¹⁴

5. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.
- (2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas. Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.¹⁵
- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁶

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

A. Cox Petition for Market Modification

6. Cox has filed a Petition for Special Relief with the Commission.¹⁷ Cox seeks to modify

¹⁴ *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

¹⁵ The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

¹⁶ 47 C.F.R. §76.59(b).

¹⁷ Petition for Special Relief of CoxCom, Inc., CSR-7350-A (Cox Petition).

the Cleveland-Akron, Ohio DMA to exclude the ten communities in Cuyahoga County served by Cox (Cox communities) from the television market of WGGN-TV, Channel 52, Sandusky, Ohio, licensed to CFB, for the purposes of the Commission's cable television mandatory broadcast signal carriage rules.¹⁸ CFB filed an opposition, and Cox has filed a reply.

7. As a statutory factor, historical carriage of a station by the cable system serving the subject communities is considered evidence of a close economic relationship between the station and the communities. With respect to historical carriage, Cox states that neither it nor any "other similarly situated Cuyahoga County cable system[]" has ever carried WGGN in the cable communities.¹⁹ CFB, however, alleges that its lack of historical carriage may reflect its status as a specialty station that like other "specialty stations" faces carriage discrimination.²⁰ The Commission also has held that a station's carriage on cable systems located near the subject communities may be indicative of close economic ties between the station and the subject communities.²¹ In this regard, CFB explains that it is carried on Time Warner cable systems serving West Cleveland and Elyria, the latter of which is located "directly between Sandusky and the Communities."²² CFB further states that Cox carries WUAB-TV, a station licensed to Lorain, Ohio and located approximately 28 miles from WGGN's community of license (approximately midway between Sandusky and Cleveland).²³

8. In its reply, Cox contends that CFB has been unable to obtain historical carriage in the cable communities because of the failure of the station to provide local service, a Grade B signal over the communities, and local programming.²⁴ Cox contends that these factors were determinative in *Cablevision of Cleveland, L.P. and V. Cable, Inc.* ("*Cablevision of Ohio*"),²⁵ a case that Cox argues is indistinguishable from, and thus should control, this decision.²⁶

9. Cox's contention that there is no historical carriage of WGGN on its system is not

¹⁸ These communities are: Broadview Heights, Brooklyn Heights, Seven Hills, Parma, Parma Heights, Lakewood, Rocky River, Fairview Park, Olmsted Falls, and Olmsted Township. Lakewood was previously excluded from WGGN's market in *Cablevision of Cleveland, L.P.*, 11 FCC Rcd 18034.

¹⁹ See Cox Petition at 9.

²⁰ WGGN Opposition to Cox (citing *Nationwide Communications, Inc.*, 10 FCC Rcd 13040, 13043 (1995); cf. *Family Stations, Inc.*, 18 FCC Rcd 22916, 2292 (2003) ("In analyzing a specialty station's request to modify it[s] television market, historical carriage and local viewership are not as important in the analysis.")). WGGN states that it broadcasts approximately 150 hours of religious and values-based programming per week. *Id.* at 9.

²¹ See *Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087, 20092 (1998).

²² WGGN Opposition to Cox at 4-5.

²³ *Id.* at 5.

²⁴ CoxCom, Inc. Reply to Opposition (Cox Reply) at 3-4.

²⁵ 11 FCC Rcd 18034 (1996) ("*Cablevision of Ohio*"), rev. denied, 16 FCC Rcd 15575 (2001) ("*Cablevision Reconsideration*").

²⁶ Cox Reply at 3. In *Cablevision of Ohio*, the Bureau excluded WGGN from several communities served by Cablevision of Ohio, including Bratenahl and Cleveland, Ohio. See *Cablevision Reconsideration*, 16 FCC Rcd at 15577-78.

refuted. Moreover, the station's carriage in Elyria is not indicative of close economic ties between CFB and the Cox communities as Elyria is located between 10 and 23 miles from the Cox communities and is located midway between Sandusky and Cleveland. Similarly, service to a single community in West Cleveland is not sufficient to show close economic ties between the Cox communities and the station. Furthermore, Cox's carriage of a station in Lorain is not indicative of close economic ties between CFB and the Cox communities because Lorain is twice as far away from CFB as it is from the Cox communities and is located midway between Sandusky and Cleveland. Nevertheless, because WGGN offers specialized content, cable systems may be more reluctant to carry this station because of its appeal to smaller, niche audiences. For this reason, the Bureau has traditionally not given much weight to a lack of historical carriage of specialty stations.²⁷ As noted by Cox in its Reply, the Bureau in *Cablevision of Ohio* found that despite its specialized format, WGGN's lack of historical carriage in the Cleveland area was of "evidential significance when linked with other information regarding the market and the particular distances involved..."²⁸ Nevertheless, as discussed below, new evidence offered by CFB regarding the scope of its market and local service to the cable communities suggest that CFB's lack of historical carriage is not determinative in this case.

10. Another factor that guides the Bureau's analysis is whether television stations provide coverage or other local service to the cable communities. Cox suggests that CFB is incapable of providing technical service to the Cox communities, both because of assumed antenna use practices of Cuyahoga County residents and because of the "substantial distance" between CFB and the Cox communities.²⁹ This physical distance, asserts Cox, by itself is indicative of a lack of local connection with the Cox communities as they are approximately 53 miles from Sandusky.³⁰ Furthermore, Cox asserts that CFB fails to provide any truly local programming to residences in the Cox communities.³¹ In support of this contention, Cox states that the "the station is not listed in the major television viewing guides distributed in the area."³² Cox also contends that it carries several stations that do provide programming local to the cable communities.³³ In response, CFB asserts that the physical distance is not so overwhelming as to lead to the conclusion that the cable systems are outside WGGN's market.³⁴ CFB

²⁷ See, e.g., *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 (2003); *Falcon Cable Systems Co. II, L.P.*, 18 FCC Rcd 23774, 23781 (2003).

²⁸ Cox Reply at 11.

²⁹ Cox Petition at 14-15.

³⁰ *Id.* at 15. In support of this contention, Cox states that the Commission in prior market modification decisions has held that distances of more than 40-50 miles have precluded a broadcaster from establishing an economic nexus with a cable community.

³¹ *Id.* at 16.

³² *Id.*

³³ *Id.* at 21, 22.

³⁴ See WGGN Opposition to Cox at 8 (noting that in *Time Warner Entertainment-Advance/Newhouse Partnership*, 13 FCC Rcd 5900 (1997), the Commission refused to exclude cable communities approximately 75 miles from the station's community of license). In support of this contention, WGGN states that Cox carries three stations licensed in Akron, Ohio, located more than 30 miles from the Cox communities, and one station licensed in Canton, Ohio, approximately 50 miles from the Cox communities. *Id.* at 9.

also asserts that contrary to Cox's contention, the station does provide Grade B or better coverage to nine of the ten Cox Communities, and Grade A coverage to portions of eight of the communities.³⁵ On this question, CFB has submitted a Longley Rice study which shows that WGGN places Grade A or B coverage over a substantial portion of nine of the Cox Communities, and that the tenth is on the fringe of the Grade B service area.³⁶ Furthermore, that community is served by the same cable system as the other Cox communities. In view of the above, we find that WGGN provides local service to these communities.

11. Viewership in the communities is the final factor argued by the parties. Cox concludes its arguments by stating that WGGN "fails to achieve any significant ratings in either cable or non-cable household within the Cox communities" because WGGN fails to provide technical coverage and has no history of carriage.³⁷ Cox also states that WGGN garners less than 1 percent of viewers in both Cuyahoga County, home of the Cox communities, and WGGN's home county of Erie. CFB observes, however, that the similarity in viewership between these counties undermines Cox's argument that low viewership should be seen as proof that WGGN is not truly "local." Instead, it bolsters CFB's argument that viewership should be discounted in this case because WGGN is a specialty station that appeals primarily to niche audiences by definition.³⁸

12. With respect to viewership, we agree with CFB. We acknowledge that as a station with a specialized format, WGGN may have difficulty developing substantial numbers of viewers or carriage rights but the station may nonetheless be particularly valuable to underserved populations within a community. Therefore, like historical carriage, we will give limited weight to this factor.³⁹

13. As the Commission recently found in a similar case, based on the totality of the evidence in this proceeding, we find that WGGN serves those Cox communities over which it is predicted to place a Grade B signal or better.⁴⁰ Therefore we reject Cox's petition to modify the station's television market to exclude Brooklyn Heights, Broadview Heights, Seven Hills, Parma, Parma Heights, Rocky River, Fairview Park, Olmsted Falls, and Olmsted Township; and dismiss it as moot as to Lakewood.⁴¹

B. Mandatory Carriage Complaint Against Cox

14. In support of its argument for carriage, CFB asserts that it is a full-power commercial

³⁵ *Id.* at 14.

³⁶ *Id.* at Exhibit C.

³⁷ Cox Petition at 24.

³⁸ *Id.* at 11.

³⁹ See, e.g., *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 (2003); *Falcon Cable Systems Co. II, L.P.*, 18 FCC Rcd 23774, 23781 (2003).

⁴⁰ *In the Matter of East Cleveland Cable TV & Communications, LLC Petition for Modification of the Cleveland, Ohio Designated Market Area With Regard to Television Station WGGN (TV), Sandusky, OH*, DA 07-3681, CSR-7157-A (August 23, 2007)(East Cleveland Cable Petition).

⁴¹ Lakewood was excluded from WGGN's market area in a previous Commission proceeding. See *Cablevision Reconsideration*, 16 FCC Rcd at 15577-78.

station located within the Cleveland-Akron (Canton), Ohio DMA. All of the communities served by Cox's cable system are located within the same DMA.⁴² CFB states that WGGN-TV broadcasts over-the-air on channel 52 and provides the residents of the Cleveland-Akron DMA with a variety of locally produced religious and values-based programming and programming from the Trinity Broadcasting Network. CFB also states that it elected must carry status for WGGN-TV via an "election letter" to Cox dated September 27, 2005, prior to the beginning of the current election cycle.⁴³ Cox disputes this characterization, stating that CFB's September 27 letter should be considered a "demand letter." Both parties agree that Cox responded with a letter dated December 20, 2005, in which it declined to carry WGGN due to a stated inability to receive a good quality signal at the Cox headend. CFB then sent a "demand letter" dated February 5, 2007, in which it explicitly stated that it believed Cox had failed to comply with the Commission carriage requirements, and recommitted to paying for delivery of a good quality signal to Cox's headend. There was no formal response. Cox states that this was a second demand letter for the current election cycle, and as such they had no obligation to respond. They also argue that, because we should hold that the September 27 letter was a "demand letter" rather than an "election letter," CFB's mandatory carriage complaint is not timely. CFB replies that the September 27 letter "did not allege any specific failure to meet carriage obligations, nor did it identify its specific reasons for believing that Cox is obligated to carry the Station."

15. CFB is correct. This initial letter merely served to notify Cox of CFB's mandatory carriage election. It could not allege any failure of carriage for the current election cycle, as the cycle had not yet begun. CFB's demand letter was delivered to Cox on February 9, 2007, Cox did not reply within 30 days, and CFB filed a timely complaint with the Commission on May 10, 2007.

16. Cox argues that the complaint should be dismissed as to Lakewood, a community that has been previously excluded from WGGN's market area. Cox states that the Commission has found that when cable communities are excluded from the market of a station, that station ceases to be a "local commercial television station" for those communities under the must-carry rules. CFB does not dispute this argument.

17. Although Cox also asserts that CFB fails to provide a good quality signal to the system's headend, CFB asserts that it is committed to providing a good quality signal at its own expense via satellite delivery. We conclude that CFB's suggested delivery of WGGN's signal via satellite is an acceptable alternative pursuant to Section 76.55(c)(3) of the Commission's rules.⁴⁴ Therefore, we dismiss CFB's petition for carriage in Lakewood, because it is outside of WGGN's market area, but grant it as to the other Cox communities.

C. Time Warner Petition for Market Modification

18. Time Warner has filed a Petition for Special Relief with the Commission to modify the Cleveland-Akron, Ohio DMA to exclude numerous communities served by Time Warner-operated cable systems (TWC communities) from the television market of WGGN-TV, Channel 52, Sandusky, Ohio,

⁴² Broadview Heights, Brooklyn Heights, Seven Hills, Parma, Parma Heights, Lakewood, Rocky River, Fairview Park, Olmsted Falls, and Olmsted Township.

⁴³ The current cycle began January 1, 2006, and concludes on December 31, 2008.

⁴⁴ See *Rancho Palos Verdes Broadcasters, Inc. v. Lone Pine Television, Inc.*, 18 FCC Rcd 7068, 7071 (2003).

licensed by CFB, for the purposes of the Commission's mandatory carriage rules.⁴⁵ CFB filed an opposition, and Time Warner filed an erratum to their initial Petition removing several communities from the Petition because they had already been excluded from WGGN's market area. CFB did not file a reply.

19. As a statutory factor, historical carriage of a station by the cable system serving the subject communities is considered evidence of a close economic relationship between the station and the communities. With respect to historical carriage, Time Warner states that "WGGN-TV has no history of carriage in any of the TWC communities."⁴⁶ CFB, however, explains that its lack of historical carriage may reflect its status as a specialty station that like other "specialty stations" faces carriage discrimination.⁴⁷ The Commission has held that a station's carriage on cable systems located near the subject communities may be indicative of close economic ties between the station and the subject communities.⁴⁸ CFB explains that it is carried on Time Warner cable systems serving West Cleveland and Elyria, the latter of which is located "directly between Sandusky and the Communities."⁴⁹ CFB further states that Time Warner carries WUAB-TV in all of the communities. It states that WUAB is a station licensed to Lorain, Ohio and located approximately 28 miles from WGGN's community of license (approximately midway between Sandusky and Cleveland).⁵⁰

20. Time Warner contends that CFB has been unable to obtain historical carriage in the

⁴⁵ Petition for Special Relief of Time Warner Cable, CSR-7230-A (TWC Petition). The TWC Petition, as modified by the July 26, 2007 Erratum, seeks to exclude 141 communities from WGGN's market area. These communities are: Ashtabula, Ashtabula, Austinburg, Conneaut, Geneva, Geneva, Geneva-On-The-Lake, Harpersfield, Jefferson, Jefferson, Kingsville, Lenox, Madison, Madison, North Kingsville, Plymouth, Saybrook, Sheffield, Brown, Harrison Township, Lake Mohawk, Magnolia, Malvern, Wadsworth, Wadsworth Twp, Westfield, Atwater, Brady Lake, Brimfield, Charlestown, Deerfield, Edinburg, Franklin, Garretttsville, Kent, Nelson Ledges, Palmyra, Palmyra (N), Randolph, Ravenna, Ravenna, Robins Park, Rootstown, Spring Lakes Mhp, Streetsboro, Suffield, Sugar Bush Knolls, Windham, Windham, Alliance, Bethlehem, Canton, Canton, East Canton, East Sparta, Hartville, Hills & Dales, Jackson, Lake, Lake, Lexington, Limaville, Louisville, Marlboro, Meyers Lake, Nimishillin, North Canton, Osnaburg, Paris, Perry, Pike, Plain, Sandy, Washington, Waynesburg, Akron, Barberton, Barberton, Boston, Clinton, Copley, Coventry, Cuyahoga Falls, Fairlawn, Franklin, Green, Lakemore, Mogadore, Munroe Falls, New Franklin, Norton, Silver Lake, Springfield, Stow, Tallmadge, Willows, Mineral City, Sandy Township, Chippewa, Congress, Akron, Aurora, Boston Heights, Chester, Concord, Fairlawn, Greenwood Village, Hiram, Hiram, Hudson, Kirtland, Kirtland Hills, Leroy, Macedonia, Mantua, Mantua, Mentor-On-The-Lake, Moreland Hills, North Perry, Northfield Center, Norton, Painesville, Peninsula, Perry, Perry, Reminderville, Sagamore Hills, Shalersville, Twinsburg, Twinsburg, Waite Hill, Eastlake, Fairport Harbor, Grand River, Lakeline, Mentor, Painesville, Timberlake, Wickliffe, Willoughby, and Willoughby Hills.

⁴⁶ TWC Petition at 6.

⁴⁷ WGGN Opposition to Time Warner at 3-4 (citing *Nationwide Communications, Inc.*, 10 FCC Rcd 13040, 13043 (1995); cf. *Family Stations, Inc.*, 18 FCC Rcd 22916, 2292 (2003) ("In analyzing a specialty station's request to modify it[s] television market, historical carriage and local viewership are not as important in the analysis.")). WGGN states that it broadcasts approximately 150 hours of religious and values-based programming per week. *Id.* at 6.

⁴⁸ See *Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087, 20092 (1998).

⁴⁹ WGGN Opposition to Time Warner at 3.

⁵⁰ *Id.*

cable communities because it is geographically distant, and because of the failure of the station to provide local service, a Grade B signal over the communities, and local programming.⁵¹ Cox contends that these factors were determinative in a number of cases with similar factual circumstances, such as *Armstrong Utilities Inc.*,⁵² and that those cases should dictate the outcome of this decision.⁵³

21. Time Warner's contention that there is no historical carriage of WGGN on its system is not refuted. The station's carriage in Elyria is not indicative of close economic ties between CFB and the TWC communities as Elyria is located a significant distance from the major population centers of the TWC communities, and is located midway between Sandusky and Cleveland. Similarly, service to a single community in West Cleveland is not sufficient to show close economic ties between the TWC communities and the station. Furthermore, Cox's carriage of a station in Lorain is not indicative of close economic ties between CFB and the Cox communities because Lorain is significantly closer to the TWC communities, midway between Sandusky and Cleveland. Nevertheless, because WGGN offers specialized content, cable systems may be more reluctant to carry this station because of its appeal to smaller, niche audiences. For this reason, the Bureau has traditionally not given much weight to a lack of historical carriage of specialty stations.⁵⁴ Furthermore, as discussed below, new evidence offered by CFB regarding the scope of its market and local service to some of the cable communities suggest that CFB's lack of historical carriage should not be determinative in this case.

22. Another factor that guides the Bureau's analysis is whether television stations provide coverage or other local service to the cable communities. Time Warner suggests that CFB does not provide Grade B coverage to any of the TWC communities, and is incapable of providing technical service to those communities because of their "lack of geographic proximity" to CFB.⁵⁵ This physical distance, asserts Time Warner, is itself indicative of a lack of local connection with the TWC communities, as similar distances formed the basis for prior market modifications.⁵⁶ Furthermore, Time Warner asserts that CFB fails to provide any truly local programming to residences in the TWC communities.⁵⁷ In support of this contention, Time Warner states that WGGN carries exclusively religious programming of no specific interest to residents of the TWC communities, and that it is not listed in the "principal local print sources of television station listings for residents of the TWC communities."⁵⁸ Time Warner also contends that it carries several stations that do provide programming

⁵¹ TWC Petition at 3.

⁵² 11 FCC Rcd 18034 (1996).

⁵³ TWC Petition at 3. In *Armstrong Utilities Inc.*, the Bureau excluded WGGN from several communities served by Armstrong Utilities, including Ashland and Medina, Ohio.

⁵⁴ See, e.g., *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 (2003); *Falcon Cable Systems Co. II, L.P.*, 18 FCC Rcd 23774, 23781 (2003).

⁵⁵ TWC Petition at 7.

⁵⁶ *Id.* at 8. In support of this contention, Time Warner cites to several prior market modification decisions in which it states that the Commission has held that separations of as little as 38 miles have precluded a broadcaster from establishing an economic nexus with a cable community.

⁵⁷ *Id.* at 9-10.

⁵⁸ *Id.* at 10.

local to the cable communities.⁵⁹ In response, CFB asserts that the physical distance is not so overwhelming as to compel the conclusion that the cable systems are outside WGGN's market.⁶⁰ CFB also asserts that contrary to Time Warner's contention, the station does provide Grade B or better coverage to "many" of the TWC communities.⁶¹ Many of those communities were removed from this petition by Time Warner's July 26, 2007 erratum, filed after WGGN's Opposition. WGGN did not file a further response. In their opposition, CFB submitted a Longley Rice study which shows that WGGN places Grade A or B coverage over a substantial portion of ten of the Time Warner Communities that remain at issue.⁶² Five of these are in Time Warner's Mentor system, and the other communities served by that system are in close proximity to WGGN's Grade B coverage area. In contrast, the five non-Mentor communities predicted to receive a Grade B signal are geographically distant from any other communities in the Cleveland system that have not been previously excluded. In view of the above, we find that WGGN provides local service to the Mentor communities and the five non-Mentor communities.

23. Viewership in the communities is the final factor argued by the parties. Time Warner concludes its arguments by stating that WGGN "fails to achieve reportable off-air viewing in any county where the TWC systems operate" and that this absence is to be expected given that WGGN fails to provide either technical service or local programming to the TWC communities. CFB replies that its status as a specialty station should be considered when reviewing viewership data, and that lack of carriage itself may be a source of low viewership in a given community.⁶³

24. With respect to viewership, we agree with CFB. We acknowledge that as a station with a specialized format, WGGN may have difficulty developing substantial numbers of viewers or carriage rights but the station may nonetheless be particularly valuable to underserved populations within a community. Therefore, like historical carriage, we will give limited weight to this factor.⁶⁴

25. As the Commission recently found in two similar cases, the totality of the evidence regarding CFB's service to these communities is against exclusion of the communities in which they provide local service, and in favor of exclusion where they can not make such a showing.⁶⁵ Therefore,

⁵⁹ *Id.* at 10-11.

⁶⁰ See WGGN Opposition to Time Warner at 5 (noting that in *Time Warner Entertainment-Advance/Newhouse Partnership*, 13 FCC Rcd 5900 (1997), the Commission refused to exclude cable communities approximately 75 miles from the station's community of license). In support of this contention, CFB states that Time Warner carries "more desirable" stations licensed in communities located just as far from the TWC communities as Sandusky. *Id.* at 5-6.

⁶¹ *Id.* at 5.

⁶² *Id.* at Exhibit C.

⁶³ *Id.* at 8.

⁶⁴ See, e.g., *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 (2003); *Falcon Cable Systems Co. II, L.P.*, 18 FCC Rcd 23774, 23781 (2003).

⁶⁵ East Cleveland Cable Petition, *supra* at note 40, and *In the Matter of Time Warner NY Cable LLC d/b/a Time Warner Cable Petition for Modification of the DMA Market of Television Broadcast Station WGGN-TV, Sandusky, Ohio*, DA 07-3682, CSR-7181-A (August 23, 2007).

we reject Time Warner's petition to modify the station's television market to exclude those communities in which CFB provides local service,⁶⁶ and grant it as to the remainder of the communities in the petition.⁶⁷

D. Mandatory Carriage Complaint Against Time Warner

26. In support of its argument for carriage, CFB asserts that it is a full-power commercial station located within the Cleveland-Akron (Canton), Ohio DMA. All of the communities served by Time Warner's cable systems are located within the same DMA.⁶⁸ CFB states that WGGN-TV broadcasts over-the-air on channel 52 and provides the residents of the Cleveland-Akron DMA with a variety of locally produced religious and values-based programming and programming from the Trinity Broadcasting Network. CFB also states that it elected must carry status for WGGN-TV via "election letters" sent to each of the Time Warner systems (and/or their predecessors in interest) on or about September 27, 2005, prior to the beginning of the current election cycle.⁶⁹ Time Warner disputes this characterization, stating that the language of CFB's September 27 letters "crosses the line into carriage demand territory."⁷⁰ Both parties agree that Time Warner responded with a single letter dated December 7, 2005, in which the operator declined to carry WGGN due to poor quality of the signal at the Akron headend. Time Warner made no claims about the signal delivery at any other headend locations for its various systems. CFB then sent what it describes as "demand letters" on February 8, 2007, in which it explicitly stated that it believed Time Warner had failed to comply with the Commission carriage requirements, and recommitted to paying for delivery of a good quality signal to the appropriate Time Warner headends. There was no formal response. Time Warner argues that, because we should hold that the September 27 letter was a "demand letter" rather than an "election letter," CFB's mandatory carriage complaint is not timely.⁷¹ CFB replies that the September 27 letter did not allege any specific failure to meet carriage

⁶⁶ Eastlake, Fairport Harbor, Grand River, Lakeline, Mentor, Painesville, Timberlake, Wickliffe, Willoughby, Willoughby Hills, Chester, Concord, Kirtland, Kirtland Hills, and Waite Hill.

⁶⁷ Ashtabula, Ashtabula, Austinburg, Conneaut, Geneva, Geneva, Geneva-On-The-Lake, Harpersfield, Jefferson, Jefferson, Kingsville, Lenox, Madison, Madison, North Kingsville, Plymouth, Saybrook, Sheffield, Brown, Harrison Township, Lake Mohawk, Magnolia, Malvern, Wadsworth, Wadsworth Twp, Westfield, Atwater, Brady Lake, Brimfield, Charlestown, Deerfield, Edinburg, Franklin, Garrettsville, Kent, Nelson Ledges, Palmyra, Palmyra (N), Randolph, Ravenna, Ravenna, Robins Park, Rootstown, Spring Lakes Mhp, Streetsboro, Suffield, Sugar Bush Knolls, Windham, Windham, Alliance, Bethlehem, Canton, Canton, East Canton, East Sparta, Hartville, Hills & Dales, Jackson, Lake, Lake, Lexington, Limaville, Louisville, Marlboro, Meyers Lake, Nimishillin, North Canton, Osnaburg, Paris, Perry, Pike, Plain, Sandy, Washington, Waynesburg, Akron, Barberton, Barberton, Boston, Clinton, Copley, Coventry, Cuyahoga Falls, Fairlawn, Franklin, Green, Lakemore, Mogadore, Munroe Falls, New Franklin, Norton, Silver Lake, Springfield, Stow, Tallmadge, Willows, Mineral City, Sandy Township, Chippewa, Congress, Akron, Aurora, Boston Heights, Fairlawn, Greenwood Village, Hiram, Hiram, Hudson, Leroy, Macedonia, Mantua, Mantua, Mentor-On-The-Lake, Moreland Hills, North Perry, Northfield Center, Norton, Painesville, Peninsula, Perry, Perry, Reminderville, Sagamore Hills, Shalersville, Twinsburg, and Twinsburg.

⁶⁸ *Supra* note 45.

⁶⁹ The current cycle began January 1, 2006, and concludes on December 31, 2008.

⁷⁰ Time Warner Opposition to Mandatory Carriage Complaint (Time Warner Opposition) at 2.

⁷¹ *Id.* at 3

obligations and did not demand the correction of any such failure.

27. CFB is correct. The initial letters merely served to notify Time Warner of CFB's mandatory carriage election. It could not allege any failure of carriage for the current election cycle, as the cycle had not yet begun. CFB's demand letters were delivered between February 9 and February 12, 2007, Time Warner did not reply within 30 days, and CFB filed a timely complaint with the Commission on May 10, 2007.

28. Although Time Warner no longer appears to assert that CFB fails to provide a good quality signal to the systems' headends, we observe that CFB asserts that it is committed to providing a good quality signal at its own expense via satellite delivery if signal quality again becomes an issue. We conclude that CFB's suggested delivery of WGGN's signal via satellite is an acceptable alternative pursuant to Section 76.55(c)(3) of the Commission's rules.⁷²

29. Several of the TWC communities at issue in this complaint have been excluded from WGGN's market area, either in this consolidated Order or in an earlier Order. The Commission has found that when cable communities are excluded from the market of a station, that station ceases to be a "local commercial television station" for those communities under the must-carry rules. Therefore, we grant CFB's petition for carriage in those TWC communities that have not been excluded from its market area,⁷³ but dismiss it as to all other TWC communities because they are outside of its market area.⁷⁴

E. Unopposed Mandatory Carriage Complaints

30. In each of their mandatory carriage complaints, CFB states that WGGN-TV is licensed to Sandusky, Ohio, which is in the Cleveland-Akron (Canton), Ohio DMA. The communities served by Orwell, Rapid, and GLW are also in the Cleveland-Akron (Canton), Ohio DMA.⁷⁵ CFB states that WGGN-TV broadcasts over-the-air on channel 52 and provides the residents of the Cleveland-Akron DMA with a variety of locally produced religious and values-based programming and programming from the

⁷² See *Rancho Palos Verdes Broadcasters, Inc. v. Lone Pine Television, Inc.*, 18 FCC Rcd 7068, 7071 (2003).

⁷³ Eastlake, Fairport Harbor, Grand River, Lakeline, Mentor, Painesville, Timberlake, Wickliffe, Willoughby, Willoughby Hills, Chester, Concord, Kirtland, Kirtland Hills, and Waite Hill.

⁷⁴ Ashtabula, Ashtabula, Austinburg, Conneaut, Geneva, Geneva, Geneva-On-The-Lake, Harpersfield, Jefferson, Jefferson, Kingsville, Lenox, Madison, Madison, North Kingsville, Plymouth, Saybrook, Sheffield, Brown, Harrison Township, Lake Mohawk, Magnolia, Malvern, Wadsworth, Wadsworth Twp, Westfield, Atwater, Brady Lake, Brimfield, Charlestown, Deerfield, Edinburg, Franklin, Garrettsville, Kent, Nelson Ledges, Palmyra, Palmyra (N), Randolph, Ravenna, Ravenna, Robins Park, Rootstown, Spring Lakes Mhp, Streetsboro, Suffield, Sugar Bush Knolls, Windham, Windham, Alliance, Bethlehem, Canton, Canton, East Canton, East Sparta, Hartville, Hills & Dales, Jackson, Lake, Lake, Lexington, Limaville, Louisville, Marlboro, Meyers Lake, Nimishillin, North Canton, Osnaburg, Paris, Perry, Pike, Plain, Sandy, Washington, Waynesburg, Akron, Barberton, Barberton, Boston, Clinton, Copley, Coventry, Cuyahoga Falls, Fairlawn, Franklin, Green, Lakemore, Mogadore, Munroe Falls, New Franklin, Norton, Silver Lake, Springfield, Stow, Tallmadge, Willows, Mineral City, Sandy Township, Chippewa, Congress, Akron, Aurora, Boston Heights, Fairlawn, Greenwood Village, Hiram, Hiram, Hudson, Leroy, Macedonia, Mantua, Mantua, Mentor-On-The-Lake, Moreland Hills, North Perry, Northfield Center, Norton, Painesville, Peninsula, Perry, Perry, Reminderville, Sagamore Hills, Shalersville, Twinsburg, and Twinsburg.

⁷⁵ See *Broadcasting and Cable Yearbook 2007* at B-148.

Trinity Broadcasting Network. CFB also states that it elected “must carry” for WGGN-TV on each of these systems prior to the beginning of the current election cycle.⁷⁶ As of January 2007, CFB states, WGGN-TV was not being carried on any of these systems, and CFB therefore sent a “demand letter,” dated February 5, 2007, to each of the systems.

31. These letters notified each system in writing of its obligation to carry WGGN-TV on channel 52, and that the refusal to carry WGGN-TV was unacceptable and a violation of the Commission's must carry rules. They explained that CFB was willing to negotiate issues relating to channel positioning, and committed CFB to paying for delivery of a good quality signal to the principal headend of each system, including additional equipment if necessary. CFB states that Orwell, Rapid, and GLW did not respond to the demand for carriage, and that none of the systems was providing one-third of its channel space to local television stations.⁷⁷ CFB filed these complaints on May 10, 2007, and asserts that WGGN-TV qualifies as a local television station under Section 76.55(c) of the Commission's rules and therefore is entitled to carriage on Orwell's Orwell, Ohio cable system, Rapid's Rock Creek, Ohio cable system, and GLW's Wellington, Ohio cable system.⁷⁸

32. Based on CFB's unopposed representations as set forth above, we find WGGN-TV to be qualified as a local television station under Section 76.55(c) of the Commission's rules and thus entitled to carriage on channel 52 on each of the cable systems at issue.

IV. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-7230-A), filed by Time Warner Cable **IS GRANTED IN PART AND DENIED IN PART**, as discussed herein.

34. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the petition for carriage filed by Christian Faith Broadcast, Inc. against Time Warner Cable **IS GRANTED IN PART AND DENIED IN PART**, as discussed herein, and that Time Warner Cable shall commence carriage of WGGN-TV in those communities with respect to which the petition was granted within sixty (60) days of the date that WGGN-TV provides a good quality signal to the cable system's principal headend.

35. **IT IS FURTHER ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-7350-A), filed by CoxCom, LLC, d/b/a Cox Communications Cleveland Area **IS DENIED**.

36. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of

⁷⁶ The current cycle began January 1, 2006, and concludes on December 31, 2008. CFB states that it specifically notified GLW of its “must carry” status via an election letter dated September 27, 2005. While CFB does not say whether it filed election letters with Orwell and Rapid, the Commission's rules do not require eligible stations to actively elect “must carry.” 47 C.F.R. § 76.56.

⁷⁷ 47 C.F.R. § 76.56(b).

⁷⁸ 47 C.F.R. § 76.55(c).

1934, as amended, 47 U.S.C. § 534, that the petition for carriage filed by Christian Faith Broadcast, Inc. against Cox Communications Cleveland Area **IS GRANTED IN PART AND DISMISSED IN PART** and that CoxCom, LLC shall commence carriage of WGGN-TV in those communities with respect to which the petition was granted within sixty (60) days of the date that WGGN-TV provides a good quality signal to the cable system's principal headend.

37. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the petition for carriage filed by Christian Faith Broadcast, Inc. against Orwell Cable Television **IS GRANTED** and that Orwell Cable Television shall commence carriage of WGGN (TV) within sixty (60) days of the date that WGGN (TV) provides a good quality signal to the cable system's principal headend.

38. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the petition for carriage filed by Christian Faith Broadcast, Inc. against Rapid Cable **IS GRANTED** and that Rapid Cable shall commence carriage of WGGN (TV) within sixty (60) days of the date that WGGN (TV) provides a good quality signal to the cable system's principal headend.

39. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the petition for carriage filed by Christian Faith Broadcast, Inc. against GLW Broadband **IS GRANTED** and that GLW Broadband shall commence carriage of WGGN (TV) within sixty (60) days of the date that WGGN (TV) provides a good quality signal to the cable system's principal headend.

40. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁷⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
Media Bureau

⁷⁹ 47 C.F.R. § 0.283.